



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNDL MNRL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord and her agent, M.C. attended the hearing. The landlord was given a full opportunity to be heard, to present affirmed testimony and to make submissions.

The landlord explained that individual copies the landlord's application for dispute resolution and evidentiary package were sent to the tenants by way of Canada Post Registered Mail on March 22, 2018. As part of the evidentiary package, copies of the Canada Post Registered Mail receipts were provided to the hearing. Pursuant to section 88, 89 & 90 the *Act*, the tenants are deemed to have been served with these documents on March 27, 2018.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord withhold the tenants' security deposit?

Can the landlord recover the filing fee?

Background and Evidence

Undisputed testimony was provided by the landlord explaining this tenancy began on August 4, 2017 and ended in October 2017 after the rental unit was found abandoned. Rent was \$2,250.00 per month and a security deposit of \$1,125.00 paid at the outset of the tenancy continues to be held by the landlord. The parties had signed a fixed-term tenancy agreement which was set to expire August 31, 2018. The landlord said she had posted a notice of inspection on the tenant's door after rent for October 2017 was not paid. She said the notice was ignored, and the landlord entered the property on October 22, 2017 to find the unit badly damaged with the tenants nowhere to be found, having seemingly abandoned the unit.

The landlord is seeking a monetary award of \$16,666.73 representing unpaid rent for November and December 2017, damage to the property and reimbursement for time she spent attending to the property. Specifically, the landlord was looking to recover unpaid rent of \$4,500.00, expenses of \$10,166.73 and \$2,000.00 as a "management" fee. As part of her evidentiary package the tenant provided several invoices demonstrating the amounts paid to repair various items in the rental suite, along with a copy of the condition inspection report signed by the tenants and her agent at the outset of the tenancy. The landlord also included photos showing damage to the property.

The landlord explained that because of the significant damage to the property and the associated repairs which were required, she was unable to re-rent the suite until January 1, 2018.

Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results."

Based on the undisputed testimony presented at the hearing, I find that rent remains unpaid for November and December 2017. The landlord is entitled to recover of this rent, under section 7 of the *Act*. The landlord may recover the entire amount sought in their application for unpaid rent.

The majority of the landlord's application concerns recovery of costs associated with damage to the property. *Residential Tenancy Policy Guideline #16* examines the criteria for awarding compensation. It states as follows, "The purpose of compensation is to put

the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence that compensation is due.” This *Guideline* continues by explaining, “In order to determine whether compensation is due, the arbitrator may determine whether: a party to the tenancy agreement failed to comply with the *Act*, regulations or tenancy agreement, loss or damage has resulted from this non-compliance, the party who suffered the damage or loss can prove the amount of or value of the damage, and the party who has suffered the damage has acted reasonably to minimize that damage or loss.”

After having reviewed the evidentiary package supplied by the landlord, and having considered her undisputed oral testimony, I find the landlord has sufficiently demonstrated loss under the *Act*. The landlord produced receipts showing the expenses she incurred bringing the rental unit to an adequate state following the tenants’ departure from the rental unit. I find the tenants damaged the property and left the home damaged when they abandoned the property. The landlord’s condition inspection report supplied in her evidentiary package shows the property was turned over to the tenants “as new” and was returned “trashed.” I award the landlord the entire amount sought for replacement of items damaged during the tenancy. I find the landlord was able to show loss under the *Act*, along with the amount of or value of the damage.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenants. Using the offsetting provisions contained in section 72 of the *Act*, the landlord may withhold the tenants’ security deposit in partial satisfaction for a return of the monetary award.

Conclusion

I issue a Monetary Order of \$15,541.73 in favour of the landlord as follows:

Item	Amount
Suite Restoration	\$10,166.73
Unpaid Rent for November and December 2017	4,500.00
Time and Effort	2,000.00
Recovery of Filing Fee	100.00
Less Return of Security Deposit	(-1,125.00)
Total =	\$15,541.73

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 16, 2018

Residential Tenancy Branch